

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability  
company, ) CASE NO. 3:17-cv-05760-BHS  
)  
Plaintiff, ) **JOINT STATUS REPORT**  
)  
vs. )  
)

KEVIN SYKES-BONNETT and SYKED)  
ECU TUNING INCORPORATED,)  
Washington corporation, and JOHN)  
MARTINSON, )

Defendants.

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In accordance with Federal Rule of Civil Procedure 26(f), Local Civil Rule 16, and Court Order dated July 29, 2020 (Dkt. 263), Plaintiff HP Tuners, LLC (“HPT”) and Defendants Kevin Sykes-Bonnet, Syked ECU Tuning Incorporated, and John Martinson (“Defendants”) (collectively, the “Parties”) hereby file this Joint Status Report

**Plaintiff's Statement:**

**I. NATURE OF THE CASE/PRINCIPAL ISSUES**

As to the nature of the case and principal issues, the parties incorporate by reference the information contained in their Joint Status Report dated December 21, 2017 (Dkt. 22).

Subsequent to the time of the prior Joint Status Report, HPT filed Plaintiff's First Amended Complaint on May 8, 2018 (Dkt. 35) asserting claims for: (i) violation of the Computer Fraud and Abuse Act ("CFAA") arising under 18 U.S.C. §1030; (ii) violation of the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. §1836 et seq.; (iii) misappropriation of trade secrets arising under the Washington Uniform Trade Secrets Act, RCW 19.108; (iv) violation of the Illinois Trade Secrets Act, 765 ILCS 1065/1 et. seq.; (v) unfair competition under the Washington Consumer Protection Act, RCW 19.86.020; (vi) unfair competition under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et. seq.; (vii) breach of contract; and (viii) tortious interference with prospective economic relations.

Plaintiff's First Amended Complaint added John Martinson as a Defendant. Plaintiff filed an answer on July 20, 2018 (Dkt. 56) denying the material allegations of Plaintiff's Complaint in their entirety

## **II. PROCEDURAL POSTURE**

This case was previously scheduled for trial on October 29, 2019, which date was stricken by Court Order dated October 9, 2019 (Dkt. 225). At that time, the Court declined to set this trial for the next available trial date since "review of the parties' trial briefs establishes issues that need to be resolved before this matter should proceed to trial".

The parties previously submitted all pretrial filings, as ordered, including: (1) HPT's Trial Brief (Dkt. 217), as supplemented (Dkt. 236); (2) Defendants' Trial Brief (Dkt. 223); (3) Motions In Limine by HPT (Dkt. 208) and Defendants (Dkt. 209), all of which were denied without prejudice (Dkt. 253); (4) proposed Voir Dire by HPT (Dkt. 218) and Defendants (Dkt. 221); (5) Agreed Neutral Statement of the Case (Dkt. 219); and, (6) HPT's Deposition Designations for Trial (Dkt. 220). Expert disclosures were made by the Parties in a timely

manner.

### **III. PROPOSED DISCOVERY PLAN – Fed. R. Civ. P. 26(f)(3)**

All discovery has been completed; provided, however, Plaintiffs have requested and Defendants previously had agreed to supplement their discovery responses with the production of native emails from the [fhptuners@yahoo.com](mailto:fhptuners@yahoo.com) email account currently in the possession, custody and control of counsel for Defendants. In addition, the parties shall be obligated to supplement their discovery responses and document production in accordance with the Federal Rules of Civil Procedure.

### **IV. LOCAL CIVIL RULE 26(f)**

(A) As to possibilities for promptly settling or otherwise resolving the case, multiple efforts by the Parties' have been unsuccessful to date.

(B) As to whether the parties plan to engage in some form of alternative dispute resolution, the Parties did so without resolution. On December 18, 2019, HPT gave notice to the Court of the Parties' failed mediation (Dkt. 241) (and Defendants' responded on December 19, 2019 (Dkt. 242)).

(C) There are no related cases.

(D) The Parties do not presently anticipate any need for extra discovery management insofar as discovery has been completed.

(E) N/A.

(F) The Parties do not anticipate any need to formally phase motion practice.

(G) The Parties do not presently believe this case presents any unique preservation of evidence issues other than those previously addressed by the September 17, 2019 Report and Recommendation by Magistrate Judge Theresa L Fricke on HPT's Motion for Sanctions for

Spoliation of Evidence (Dkt. 202), as adopted in part and modified by Court Order dated October 9, 2019 (Dkt. 224)

(H) The Parties do not anticipate that privilege issues will play a larger role in this case than they typically do.

(I)-(J) Discovery of ESI has been an issue and addressed throughout the case.

## **V. DISCOVERY DEADLINES**

All discovery has been completed; provided, however, Plaintiffs have requested and Defendants previously had agreed to supplement their discovery responses with the production of native emails from the [fhptuners@yahoo.com](mailto:fhptuners@yahoo.com) email account currently in the possession, custody and control of counsel for Defendants. In addition, the parties shall be obligated to supplement their discovery responses and document production in accordance with the Federal Rules of Civil Procedure.

## **VI. EXPERTS DESIGNATIONS AND REPORTS**

Expert designations and reports were previously completed.

## **VII. MOTIONS DEADLINES**

N/A

## **VIII. ADDITIONAL PARTIES/AMENDMENTS TO PLEADINGS**

The Parties do not anticipate the joinder of any additional parties or amendments to pleadings at this time.

## **IX. CONSENT TO MAGISTRATE JUDGE**

The Parties do not consent to a trial by a Magistrate Judge.

## **X. BIFURCATION**

N/A

## **XI. PRETRIAL STATEMENTS**

The Parties agree at this time that there is no need to dispense with the pretrial statements or pretrial order called for by the local rules.

## **XII. OTHER SUGGESTIONS FOR SIMPLIFYING CASE**

The Parties have previously consented to accept electronic service pursuant to FRCP 5(b)(2)(E). The Parties at this time have no other suggestions for shortening or simplifying the case. The Parties have considered and rejected the option of requesting an Individualized Trial Program under LCR 39.2.

## **XIII. TRIAL**

A. Number of Trial Days: 3-5.

B. Trial By Jury or Non-Jury: Trial by jury has been demanded.

The parties suggest a trial date of August 23, 2021, in addition to the following scheduling:

-Re-filed Motions in Limine due by July 23, 2021.

-Re-filed Pretrial Order due by August 3, 2021.

-Voir Dire/jury instructions due by August 2, 2021.

-Trial briefs (previously completed)

-Agreed Neutral Statement of the Case (previously completed)

-Deposition Designations due by (previously completed)

-Pretrial Conference on or during the week of August 9, 2021.

## **XIV. SCHEDULING CONFERENCE**

Plaintiff does not believe that the administration of the case may benefit from the Court

holding a scheduling/status conference.

Plaintiff disputes and disagrees with the Defendant's Statement below. Plaintiff asserts that Defendants' contentions, requests for relief and merits-based arguments are inappropriate and improper herein in the context of this "Status Report." Plaintiff asserts that such arguments, contentions and requests for relief should be made in the form of a motion in accordance with the Rules of Civil Procedure and the Local Rules of this Court.

**Defendants' Statement:**

This case, which has been pending nearly three years, is substantially ready for trial. A detailed pre-trial report has already been filed, and unless the Court believes it helpful to do otherwise, it makes little sense to file another pre-trial report.

Defendants are available for trial in August, 2020 as proposed by Plaintiff, as well as in December, 2020 should an August trial date be inconvenient for the Court.

Defendants further believe that a Motion for Summary Judgment on their part directed to the questions of (1) Mr. Martinson's lack of any personal liability in this action and, (2) the lack of any protectible trade-secrets purportedly misappropriated by Syked ECU Tuning would substantially narrow the issues in this case and greatly streamline the trial of this case, should a trial even be deemed necessary. In particular, there is no evidence whatsoever that Mr. Martinson had any knowledge of or participated in any way in any of the actions Plaintiff claims violated its rights. Furthermore, the two purported potential trade-secrets identified by the Court in its October 9, 2019 Order Striking Trial Date (Dkt #225) are, in fact, standard instructions created by a third-party chip manufacturer that are neither owned by Plaintiff nor secret. As noted by the Court in that Order, "[Plaintiff's] expert report, repeats the same high-level general

accusations that Defendants copied HP Tuners's trade secrets without specifically identifying what trade secrets were copied," and that, "So far, the only specific copying evidence the Court will allow are the two files identified in the Court's order, which are ("HPT00021A") and ("HPT00021B")." Again, Defendants can establish that these twThe Court tends to agree with Defendants that trial seems either unnecessary or limited to a few discrete issues.

In view of the foregoing, Defendants request that leave be provided for them to file a motion for summary judgment on these issues. (See July 29, 2020 Order, Dkt. #263 "[Mr.] Martinson may file a subsequent motion at the appropriate time.") Defendants are flexible as to when such a motion can be filed and will be happy to do so when convenient for the Court.

Finally, in view of the fact that this case has lain dormant for nearly a year and that, as noted by the Court in its October 9, 2019 Order that, "The Court tends to agree with Defendants that trial seems either unnecessary or limited to a few discrete issues," Defendants believe that a status conference with the Court to address, in detail, these matters would be beneficial and likely helpful in avoiding unneeded and wasteful activity on the part of the parties. Accordingly, Defendants request that the Court schedule and conduct a status conference when convenient to address these matters.

Dated: September 4, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2020, I caused the foregoing to be electronically  
with the Clerk of Court using the **CM/ECF system** which will electronically send Notice to all  
Counsel of Record.

MARKS & KLEIN

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